

Application of: Colin N.B. COOK et al.  
Serial No.: 10/792,286  
Filed: March 4, 2004  
Reply to Office Action of May 27, 2009

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in light of the following discussions, is respectfully requested.

Claims 1, 2 and 12-15 are currently pending in the application. No claims have been added, canceled or amended herewith.

In the outstanding Office Action, the previously filed appeal was withdrawn by the examiner, and new grounds for rejection were entered. Those new grounds for rejection includes rejections under 35 U.S.C. 103(a) alleging that claims 1, 2 and 12-15 are rendered obvious by U.S. Patent Publication No. 2002/0038334 in view of U.S. Patent No. 7,155,653 (hereinafter “the ‘653 patent”), either alone or in combination with another reference. Those grounds for rejection are respectfully traversed.

First, it is unclear whether the Office Action is intending the rejection of claim 1 to be based, at least in part, on the previously applied reference (U.S. Patent Publication No. 2002/0129353) (hereinafter “the ‘353 publication”) which was the subject of the previous appeal that was withdrawn by the PTO. The Office Action states at the end of the rejection of claim 1 that “Such tests could test the capabilities of a system and the actual operating system on the device such as taught in Williams et al. (US 2002/0129353).” As the Office Action does not refer to the ‘353 publication in the basis for the rejection (paragraph 6), it is assumed that this reference to the ‘353 publication was inadvertent and intended to be a reference to the ‘653 patent.

However, a review of the effective filing date of the ‘653 patent (Aug. 2, 2004) as compared to the effective filing date of the present application (filed March 4, 2004), shows that, even without relying on the provisional application to which this application claims priority, the ‘653 patent is not prior art to the present application. Thus, the outstanding grounds for rejection is improper and should be withdrawn.

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Accordingly, the pending claims are in condition for allowance. An early and favorable action to that effect is respectfully requested.

**CHARGE STATEMENT:** Deposit Account No. 501860, order no. **2540-0707**.

The Commissioner is hereby authorized to charge any fee specifically authorized hereafter, or any missing or insufficient fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under Rules 16-18 (missing or insufficiencies only) now or hereafter relative to this application and the resulting Official Document under Rule 20, or credit any overpayment, to our Accounting/ Order Nos. shown above, for which purpose a duplicate copy of this sheet is attached.

**This CHARGE STATEMENT does not authorize charge of the issue fee until/unless an issue fee transmittal sheet is filed.**

<p>CUSTOMER NUMBER <b>42624</b></p>	<p>Respectfully submitted,  By: / Michael R. Casey /  Michael R. Casey, Ph.D. (Reg.No. 40,294)</p>
<p>Davidson Berquist Jackson &amp; Gowdey LLP 4300 Wilson Blvd., 7th Floor, Arlington, Virginia 22203 Main: (703) 894-6400 • FAX: (703) 894-6430</p>	